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Supreme Court of the United States.

OCTOBER TERM, 1948.

WORCESTER WOOLEN MILLS CORPORATION,
Petitioner,
vs.
NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

PETITION.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Worcester Woolen Mills Corporation (hereinafter referred to as the Employer) prays that a Writ of Certiorari be issued by this Court to review the decree of the United States Circuit Court of Appeals for the First Circuit entered in case #4346, National Labor Relations Board vs. Worcester Woolen Mills Corporation, on October 4, 1948, enforcing an order of the National Labor Relations Board (hereinafter referred to as the Board).

JURISDICTION.

The decree of the Circuit Court of Appeals for the First Circuit was entered October 4, 1948 (R. p. 138).

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code (as amended by the Act of February

13, 1925); 43 Stat. 938; 28 U.S.C. 347 (a); and under Section 10 (e) of the National Labor Relations Act (49 Stat. 449; 29 U.S.C. 151 et seq.).

Statute Involved.

The statute involved is the National Labor Relations Act (hereinafter referred to as the Act).

The Taft-Hartley Act, so-called, does not apply, having been enacted subsequent to the commencement of the proceedings here involved.

Opinions Below.

The opinion of the Circuit Court of Appeals for the First Circuit (R. pp. 129–136) is not yet reported.

The decision and order of the respondent, National Labor Relations Board (R. pp. 58–60) are reported in 74 N.L.R.B. 1071, and the decision and direction of the Board in the prior representation proceedings are reported in 69 N.L.R.B. 425.

Proceedings before the Board.

"A"

The Representation Proceedings.

On April 30, 1946, a hearing before a trial examiner of the Board was held. The Union and the Employer participated. The Employer contended before the Board:

1. That the Board agent selected the Employer's observer without consulting it, and failed properly to instruct her.

2. That certain illegal actions on the part of employees, who belonged to the Union, engaging in an unlawful or wildcat strike, illegal acts of intimidation, coercion, fraud, and obtaining authorization cards before election, so influenced the employees that they were deprived of a free choice in the election, and the election was therefore illegal; and, that the acts complained of were of such character that those engaging

in such acts lost their status as employees, and were not entitled to vote, and in fact the entire election was void.

3. That five named individuals[1] were ineligible to vote, but, nevertheless, cast ballots.

4. That six challenges by the Employer should be sustained. The Board overruled the Employer's contentions. The Board sustained three of the Employer's challenges, overruled two challenges[2] (R. pp. 4–9), and reserved consideration of one challenge.[3] A Supplemental Tally made by the Board on July 19, 1946, showed that out of the sixty-seven eligible voters, fifty-nine valid ballots were cast, thirty-two were for the Union and twenty-seven were against it (R. p. 11). The Board on July 25, 1946, certified the Union as exclusive bargaining representative of the employees (R. p. 12).

"B"

The Unfair Labor Practice Proceedings.

An amended charge (R. p. 93) having been filed by the Textile Workers Union of America, C.I.O., (hereinafter called the Union), the Board by its Regional Director for the First Region (Boston, Massachusetts) issued its complaint, dated October 7, 1946, against the Employer, charging the Employer with refusal to bargain collectively with the Union as the exclusive representative of the Company's employees.

The complaint (R. pp. 94–96) alleged that the Employer thereby had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5), and Section 2 (6) and (7) of the National Labor Relations Act (49 Stat. 449; 29 U.S.C. 151) (R. pp. 94–96).

In answer to the complaint, the Employer admitted it was engaged in interstate commerce, admitted that it refused to bargain collectively with the Union, but alleged that its refusal was proper because: (R. pp. 98–101)

[1] J. Lynch, J. Leonard, Wyman Sperry, James Dulligan, and Maud Hiller.
[2] William Paris and James Paris.
[3] Philip Kent.

A. The election in which the Union was designated as the representative of the employees of the Company for the purpose of collective bargaining was invalid.

B. That persons who, because of the Company rule and the wildcat strike, were no longer employees of the Company on the eligibility date, had been allowed to vote.

1. Failure to challenge such persons at the election did not deprive the Company of the right to have the ballots declared void.

C. That the Union had lost its majority after the election and before it had either been certified by the Board or made its request to bargain collectively.

D. That the circulation of false and libellous statements about the Employer's principal officer relieved it of the obligation to recognize the Union for collective bargaining purposes (R. pp. 103–105).

A hearing was held on November 7, 1946, at Worcester, Massachusetts, before a Trial Examiner, duly designated by the Board. The Board, the Employer, and the Union participated in the hearing.

On November 21, 1946, the Trial Examiner filed an intermediate report (R. pp. 63–72), finding that the Employer had refused and is refusing to bargain collectively with the Union, which was on March 22, 1946, and at all times thereafter the exclusive bargaining representative of the employees.

The Employer filed exceptions to the report (R. pp. 74–76).

The Board issued its decision and order on August 15, 1947, (R. pp. 58–62). In its decision, the Board found that no prejudicial error had been committed. It affirmed the rulings of the Trial Examiner, and adopted his findings, conclusions, and recommendations, and concluded that the Employer had refused to bargain collectively with the Union, and issued an order directing the Employer to cease and desist from refusing to bargain with the Union as the exclusive agent of the employees and ordering it to bargain.

The Facts.

The Petitioner is a Massachusetts corporation engaged in the manufacture, sale, and distribution of woolen cloth. The

Petitioner is engaged in and admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

A few days prior to February 27, 1946, a committee of the Petitioner's employees requested the Petitioner to recognize the Textile Worker's Union of America, C.I.O., as their exclusive bargaining representative. The Petitioner asked that a proper election leading to certification by the Board be held. The committee agreed to this request.

The Petitioner had a Company rule, which had been in effect since the business started in 1936. This rule provided that any employee voluntarily quitting work, terminated his status as an employee, and was dropped from the payroll. There was no seniority system, and no sick leave. Employees who were out sick, were rehired as new employees upon their return, if the Employer saw fit to rehire them. Employees who were out for more than one (1) day were dropped from the payroll, and were immediately replaced, if possible. Any employee who sought re-employment was rehired as a new employee, only if the Petitioner wished to rehire him. There was no provision for vacation leaves or for temporary layoffs (R. pp. 7, 8, 9, 22, 119, 120, 121, 125 and 126).

On February 27, 1946, a strike of some of the Petitioner's employees occurred, without any notice, and in spite of the prior agreement to hold an election.

On February 28, 1946, the Union caused a petition for certification to be prepared (R. pp. 50–51). This petition was docketed on March 4, 1946.

A day or two after the strike started, the Employer invited the strikers, who were then on the picket line, to return to work, and advised them that if they did not return, it would immediately try to replace them.

On March 4, 1946, at a hearing held before the Massachusetts State Board of Conciliation, the Employer stated it would take the strikers back. The committee representing the strikers refused to return, unless the Employer agreed to recognize the Union. The Employer then stated, that it would be considered that the employees had left their employ-

ment, and were off the payroll. Subsequently, the Employer did replace the strikers, and notified them thereof (R. p. 28).

On March 6, 1946, the Employer agreed to accept a recommendation of the Federal Labor Conciliator that the strike be terminated, and all striking employees be reinstated, without discrimination, to the job and shift on which they were employed when the strike started, but only if and when work became available. The Federal Labor Conciliator notified the Union of this by letter dated March 15, 1946 (R. p. 24).

Most of the strikers came back to work on March 11, 1946.

On March 15, 1946, the Board's Regional Director ordered a pre-hearing election for March 22, 1946. The eligibility rules issued for this election provided that the voting unit should consist of "all employees of the Company who appeared on the payroll as of March 12, 1946" (R. p. 54). The Employer was duly advised, and it was also advised that it had a right to appoint an observer.

On March 22, 1946, the agent of the Board in charge did not consult the Employer as to its designation of an observer at the election. He met the Employer's bookkeeper as she entered the factory to deliver a pay check, and designated her as observer for the Employer during the balloting.

The Board agent handed the Employer's bookkeeper a list of the Company's employees as of March 12, 1946. This list had been prepared by the Employer's bookkeeper, and sent to the Board (R. pp. 29–30). There was evidence that the Board agent did not instruct the Employer's observer as to her duties, or else gave her inadequate instructions (R. pp. 40–41).

James Paris and William Paris were challenged by the Employer's observer. They had been on strike. On March 11, 1946, they applied for work. There was no work for them. They were not rehired until after the eligibility date (R. p. 18). Their names were not on the typewritten eligibility list, but were added in pencil to the typewritten list (R. p. 111).

J. Lynch, J. Leonard, Wyman Sperry, James Dulligan, and Maud Hiller did not appear on the typewritten list of eligible voters. Their names were added in pencil, and they

were permitted to vote without challenge. The Employer's observer did not challenge them, because of the conduct and statements of the Board agent. They were not in the employ of the Company on March 12, 1946. They were not rehired until after March 12, 1946. There is no evidence that these five ever applied for work until after March 12, 1946.

At the representation hearing, and again at the hearing of the unfair labor practice charge, the Employer sought to introduce evidence of the conduct of the strikers, evidence of fraud, coercion, and intimidation of the Company's employees by the strikers, as further evidence of the illegality of the strike. The evidence was excluded. The Trial Examiner excluded admission of two circulars issued by the Union after the certification, criticising the Employer's chief officer (R. pp. 91, 103–105).

On July 25, 1946, the Board certified the Union as the bargaining representative of the Company's employees (R. p. 12). But, by July 6, 1946, ten of the employees had terminated their employment. Of these, at least six were engaged in the strike of February, 1946 (R. pp. 89, 90).

Questions Presented.

I. Whether an agent of the National Labor Relations Board has properly conducted a pre-hearing election,

a. In designating an observer for the Employer without consulting the Employer, although the Employer had been notified that it could appoint an observer,

b. In failing to instruct the observer fully and adequately,

c. In interfering with and discouragiug the observer of the Employer from challenging persons who claimed to be employees, but whose names did not appear on the typewritten list of those eligible to vote,

d. In failing to challenge persons who were not on the eligibility list, and whose eligibility to vote was doubtful,

e. In ruling at the election that certain persons, whose eligibility to vote was doubtful, were eligible to vote.

II. Whether a Company rule, applied without discrimination, must be recognized by the Board and given proper effect.

III. Whether employees, who engage in a wildcat strike, who are replaced, and who automatically are discharged under the Company rule, lose the right to vote at certification proceedings.

IV. Whether impropriety on the part of an agent of the Board in conducting the election permits post-election challenges, or even voids the election.

V. Whether the loss of a majority by a Union prior to certification relieves the Employer from the obligation to bargain,

a. The fact that at least six employees, who had voted and who had been on strike, left the employment prior to certification, compelled the inference and conclusion that they had voted for the Union.

VI. Whether the Board erred in excluding evidence of illegal conduct on the part of the strikers.

VII. Whether the Board erred in failing to admit in evidence derogatory circulars issued by the Union after the certification concerning the Employer's chief officer.

Petitioner's Contentions.

1. The conduct of the agent of the Board was improper, and by reason thereof the rights of the Employer were prejudiced.

2. A Company rule extant for many years, and applied without discrimination, must be given full recognition by the Board.

3. Persons, who are no longer employees by reason of a Company rule, and who have not been rehired on the eligibility date, and who went on strike in spite of an agreement to hold an election, cannot vote in representation proceedings.

4. Where the conduct of the Board agent was improper or illegal, the election is void, and an exception to the rule against post-election challenges arises.

5. Where, after an election and before certification, former strikers leave the employ of the Employer, a conclusion is required that such employees voted for the Union, and the pro-Union vote was decreased accordingly.

6. The Board erred in failing to admit evidence of the Union's derogatory circulars.

7. The Board erred in failing to admit evidence of the illegal acts on the part of the strikers.

Reasons for Granting the Writ.

The case, here presented for review, involves important questions of Federal law, which should be settled by this Court.

A determination of the proper conduct of a pre-hearing election, and of the conduct of the Board agent at such election, is important for the future proper administration of the Act.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, and this Court should review the decision of the Circuit Court of Appeals for the First Circuit, and finally reverse it.

COSIMO J. TOSCANO,
Attorney for Petitioner.

Howard W. Cowee,
Harry Zarrow,
Simon Friedman,
Of Counsel.

BRIEF IN SUPPORT OF PETITION.

Specifications of Errors.

The Circuit Court of Appeals for the First Circuit erred:

1. In holding that two persons who were challenged, were eligible to vote.

2. In failing to give effect to the Company rule that employees who quit, lose their status as employees.

3. In failing to find that at the time the strike occurred, there was no current labor dispute, and therefore the Company rule of automatic discharge applied.

4. In holding that post-election challenges are not permitted, even if there is evidence of improper conduct of the pre-hearing election.

5. In holding that the Board agent may permit the payroll list to be amended during election, by adding thereto names of persons who claimed to be employees.

6. In holding that the designation of the observer, without consulting the Employer, was proper.

7. In holding that the Board agent properly instructed the observer for the Employer as to the right to challenge.

8. In failing to find that the Board agent acted improperly in interfering with and discouraging challenges by the Employer's observer.

9. In failing to hold that the Union had lost its majority before the certification, and that the Petitioner was thereby excused from bargaining.

10. In holding that the Board's exclusion of evidence of derogatory circulars was proper.

11. In holding that the exclusion of evidence of illegal acts on the part of strikers was proper.

12. In enforcing the order of the Board.

Argument.

Point I.

The Board agent's conduct of the pre-hearing election was improper, and the election was therefore void.

While it is true that the Act does not require that an observer for the parties be appointed, *Marlin Rockwell Corporation* vs. *National Labor Relations Board*, 116 Fed. (2d) 586, 588, nevertheless, the Board does have the right in its discretion to permit the presence of observers for the parties on the ballot and for the Company.

The Board in this case did exercise its discretion in favor of permitting observers, and notified the Employer accordingly (R. p. 54). It is provided under the rules of the Board, that there must be an agent present at each election. His duties include the duty to challenge voters for cause. The observers, it is provided, are to assist the agent, who must supervise them. See: Instruction to Election Agents, N.L.R.B. 721—May 1, 1945.

The designation of an observer for the Company without consulting the Company results in a mere idle gesture; it results in a spectre without substance; a ghost without a body.

If the Board agent does take it upon himself to appoint an observer for the Company, he must make doubly sure that full instructions are given so that the democratic process, which provides for challenging of voters, may be properly preserved. *National Labor Relations Board* vs. *A. J. Tower & Company*, 329 U.S. 324. The very fact that the Company observer failed to challenge persons, whose names were not on the typewritten list, compels the inference that the instructions were inadequate. Nowhere, is there any evidence that the Board agent gave the Company observer a written copy of the instructions to election observers. See: Instructions to Election Observers, N.L.R.B. 722—April 1, 1945.

There is evidence that the Board agent discouraged the observer from challenging voters (R. p. 35). Yet, the Board disbelieves everything the Company witnesses said, and

believes only the Union witnesses. Bias, such as this, is ground for reversal.

Moreover, the Act requires a Board agent to be present at the election. Observers are designated merely to assist the agent. If the observers fail to challenge persons, whose names do not appear on the eligibility list, then it becomes the duty of the Board agent to challenge them.[1] Since there is clearly some doubt as to the status of persons not on the list, the Board agent had no right to decide as to the eligibility of these persons to vote. The Board agent had no right to make rulings. *River Raisin Paper Company, 70 National Labor Relations Board, No. 137; Knox Metal Products, Inc., 75 National Labor Relations Board, No. 36; Beggs & Cobb, Inc., 62 National Labor Relations Board, No. 193; National Labor Relations Board* vs. *Ohio Calcium Company*, 133 Fed. (2d) 721.

The Employer at the request of the Board had submitted a list of the names on the payroll as of March 12, 1946, the eligibility date. While voting was taking place, the Board agent directed and caused the list to be altered by adding to it the names of persons who claimed they were employees and were eligible to vote. Clearly, the absence of such persons from the payroll list submitted by the Employer, meant that their eligibility to vote was doubtful. In directing that their names be added and permitting them to vote, the Board agent was ruling on their eligibility to vote. The Board agent thus exceeded his powers and neglected his duties. *Freezer & Son, Inc., 74 National Labor Relations Board, No. 215; N.A.P.A., New York Warehouses, Inc., 75 National Labor Relations Board, No. 154; Westinghouse Electric Corp., 78 National Labor Relations Board, No. 38.*

Point II.

The Board's failure to recognize a Company rule applied evenly, without discrimination, was erroneous.

Under the Employer's Company rule, employees who left their work voluntarily, lost their status as employees; their

[1] J. Lynch, J. Leonard, Wyman Sperry, James Dulligan, and Maud Hiller.

employment was terminated; if they ever reapplied for work, and were hired, it was only as new employees. Under this rule, the two employees, who were challenged,[2] and the five who were not challenged,[3] having voluntarily left their work in February, 1946, thereby terminated their employment. This rule must be given full recognition and effect. *Bryan Mfg. Co., 68 National Labor Relations Board, No. 197; National Labor Relations Board* vs. *Williamson-Dickie Mfg. Co.*, 130 Fed. (2d) 260; *National Labor Relations Board* vs. *William Davies Co.*, 135 Fed. (2d) 179; *Joseph Dyson & Sons, Inc., 72 National Labor Relations Board, No. 82.*

The fact that the men involved were on strike, in no way aids them. On or about February 25, 1946, the employees through their committee had agreed that an ordered election be conducted under the auspices of the Board, to determine an exclusive bargaining agent. The strike, which took place two days later, without notice to the Employer, and in spite of the agreement, constituted the strike a "wildcat," or illegal strike. There was no current labor dispute. The Board's finding that the strike was for Union recognition is unsupported by any evidence, since there was an agreement to hold an election. *National Labor Relations Board* vs. *Draper Co.*, 145 Fed. (2d) 199; *Solvay Process Company, 47 National Labor Relations Board, No. 1113; Tampa Shipbuilding Co., 50 National Labor Relations Board, No. 177; North Electric Manufacturing Co.* vs. *National Labor Relations Board*, 123 Fed. (2d) 887; *Chamberlain Corporation, 75 National Labor Relations Board, No. 138.*

In the absence of a current labor dispute at the time of the strike, the Company rule of automatic discharge applies to persons who were not on the typewritten list, but whose names were added to that list in pencil. Clearly, William Paris and James Paris, who were challenged, should not have been eligible to vote (R. p. 28). *Western Cartridge Co.* vs. *National Labor Relations Board*, 139 Fed. (2d) 855; *National Labor Relations Board* vs. *Columbian Enameling & Stamping Co., Inc.*, 96 Fed. (2d) 948.

[2] William Paris and James Paris.
[3] J. Lynch, J. Leonard, Wyman Sperry, James Dulligan, and Maud Hiller.

Likewise, the five who were not challenged, were no longer employees, and were not eligible to vote. Moreover, there is no evidence that these five ever applied for work until after March 12, 1946, the eligibility date.

It, therefore, follows that the Board erred in ruling that William Paris and James Paris were employees temporarily laid off (R. p. 8). The Board also erred in ruling that in any event the five who were not challenged remained employees during the (illegal or wildcat) strike, and after the strike were temporarily laid off (R. p. 6). This ruling by the Board disregards the Company rule, as well as the effect of illegal strikes.

Point III.

Impropriety on the part of the Board agent in the conduct of the pre-hearing election voids the election.

It is true that this Court has stated that the Board's rule against post-election challenges will be upheld. *National Labor Relations Board* vs. *A. J. Tower Co.*, 329 U.S. 324. Yet, in that same case, this Court very properly pointed out that if the Board agent improperly conducted the election, the election is void.

The Board has recognized the exception to the general rule of the Tower case, in the cases of *Westinghouse Electric Corp., 78 National Labor Relations Board, No. 38*, and *P. N. Joslin Co., 79 National Labor Relations Board, No. 134.*

This Court cited with approval the cases of *Matter of Hale, 62 National Labor Relations Board, No. 1393*, and *Matter of Beggs & Cobb, Inc., 62 National Labor Relations Board, No. 193*, to the effect that the rule against post-election challenges cannot be used as a cloak for impropriety in the conduct of the election by the Board agent.

Point IV.

The loss of a majority by the Union after election, but before certification, relieves the Employer of the obligation to bargain.

In the Intermediate Report, the Trial Examiner states that the record does not disclose that any changes have taken place with respect to the size of the appropriate unit (R. p. 67—footnote 4). Clearly, this is wrong. The evidence (R. p. 89) shows that a stipulation was entered into by the parties, setting forth the names and dates on which some twelve persons terminated their employment. It is further stipulated, these persons had voted, and that eight of them had been actively engaged in the strike of February, 1946. It further appears, that ten of these left before the certification date.

These facts compel a conclusion that persons who were actively engaged in a strike, voted pro-Union. And, if that is true, it must follow that the pro-Union majority was decreased accordingly.

While it is true that there is a rule in favor of reasonable durability of the Board's determination, based on the results of secret election, *Frank Bros. Co.* vs. *National Labor Relations Board*, 321 U.S. 702, yet, where the Employer produces substantial evidence of a decrease of the Union majority, it then must follow that the burden should shift to the Union to show that it retained a majority. The Employer has no right to ascertain the Union membership or sympathy among his employees.

Where the Union majority has been dissipated without fault of the Employer, the Union no longer possesses authority to speak for the employees, and the Employer cannot be required to bargain with the Union. *N.L.R.B.* vs. *Inter City Advertising Co.*, 154 Fed. (2d) 244; *N.L.R.B.* vs. *Karp Metal Products Co.*, 134 Fed. (2d) 954. In *N.L.R.B.* vs. *Highland Park Mfg. Co.*, 110 Fed. (2d) 632, it is intimated that loss of majority without fault of the Employer, will relieve the Employer from a duty to bargain.

To permit persons to come in and vote, and thereafter

terminate their employment, which established their right to vote, would result in a false expression of the will of the majority.

Point V.

The exclusion of evidence offered by the Employer relative to illegal actions on the part of the strikers, and also relative to derogatory circulars issued after certification, was erroneous.

The exclusion of evidence concerning alleged illegal action on the part of the strikers, prejudiced the rights of the Employer. Such evidence has been admitted in other cases to show that coercion and intimidation resulted, so that persons voted contrary to their real and true will. Such evidence has likewise been admitted to prove that certain strikers, because of such conduct, lost their status as employees with the right to vote in an election, *N.L.R.B.* vs. *Dadourian Export Co.*, 138 Fed. (2d) 891; *N.L.R.B.* vs. *Brashear Freight Lines*, 119 Fed. (2d) 379; *N.L.R.B.* vs. *Ohio Calcium Co.*, 133 Fed. (2d) 721.

The invasion of the employees' right of freedom of choice of a bargaining agent, is a wrong, which renders the election void.

The exclusion of the circulars (R. pp. 103–105) issued after the certification likewise prejudices the Employer's rights. The foundation of fair bargaining is destroyed by the severe criticism contained therein. The ensuing hostility relieves the Employer from the duty to bargain. *N.L.R.B.* vs. *Aintree Corp.*, 135 Fed. (2d) 395.

Conclusion.

The Board's orders as confirmed by the Circuit Court of Appeals are erroneous as a matter of law, and are unwarranted by the evidence. The election is totally void. The rights of the Employer have been abrogated to such an extent that the

election is void, and it is relieved of any duty to bargain with the Union. We, therefore, respectfully urge that this Court grant the Writ.

Respectfully submitted,
COSIMO J. TOSCANO,
Attorney for Petitioner.

HOWARD W. COWEE,
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SIMON FRIEDMAN,
Of Counsel.

APPENDIX A.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD.

N.L.R.B. 721 (5–1–45)—INSTRUCTIONS TO ELECTION AGENTS.

Duties. In the conduct of this election you are a sworn Agent of the United States Government, representing the National Labor Relations Board. Your duty as such representative is to see that the election is fairly conducted, that there is no confusion at the voting places, and that the voters are permitted to mark their ballots in secret. Your attitude throughout the election, in words and in conduct, must be one of absolute impartiality. The voters should be treated with consideration and the election should be so conducted that the voters leave the voting places with the knowledge that the election is fair and secret. You will be given a badge which you must wear while in and around the place of election.

Responsibilities. One Agent will be in charge of each voting place and will be responsible for the conduct of the election at that place. When necessary there will be, in addition, another Agent at each checking table.

Observers. There will be groups of authorized observers from each organization named on the ballot and from the company. They will assist the Agent and be supervised by him. One observer of each group will act as a checker. Any others will be assigned as watchers at the ballot boxes and booths. The observers will be given badges which must be worn while they are on duty. No observer shall leave the voting place without the permission of the Agent. At the end of a period of duty at a polling place observers shall sign the certification on the conduct of the election and return their badges to the Board Agent. No observer will be permitted to keep any record of who has or has not voted.

Identification of Voters. Observers assigned as checkers are responsible for checking the voters against the eligibility lists. They will sit at one side of the table. Each voting table will have one list of the eligible employees who are to vote at that table. As each employee approaches the table, the Board Agent will ask his name and number. The checkers will then locate his name on the eligibility list. If no question of identification is raised, both checkers will check the name, preferably with different colored pencils. The Agent will then give the voter his ballot.

Balloting. The Agent is in charge of the ballots. He should tell the voter to mark the ballot in a booth. If the voter spoils the ballot, the Agent should keep the spoiled ballot and give the voter a new one. If a voter enters a booth already occupied by a voter, both voters will be required to return their ballots to the Agent, who will immediately destroy them, exercising care not to disclose any markings thereon. The Agent will then issue fresh blank ballots to each voter and conduct them to separate booths. With these exceptions, only one ballot should be given to each voter. The Agent must see that the unused ballots are watched and not touched by anyone other than an Agent. After the voter has marked his ballot and folded it in a voting booth, he should deposit the folded ballot in the ballot box. No voter should be permitted to leave the voting place with a ballot, whether marked, spoiled, or not marked. The Agent must not leave the voting place during the voting unless a relief Agent is assigned to take his place.

Challenges. Voters may be challenged for cause by the observers or an Agent. If a voter is challenged, he should step out of line so as not to hold up the voting. The Agent at the checking table should fill out the blanks on the face of the challenged ballot envelope and if there is a special Challenge Agent the voter is sent with the challenged ballot envelope to him. The Challenge Agent or the Agent at the challenge table then gives the voter a ballot and a small secret ballot envelope, instructing him to mark the ballot

in the ordinary way, seal it in the small envelope, and return with it to the Agent. When he returns with it, he is given the large challenged ballot envelope. The voter then places the small envelope in the large envelope, seals that envelope, and the Agent writes on the back of the large envelope, or on a separate Challenge Sheet, such pertinent facts as he can get relative to the reason for challenge. The voter then deposits the large envelope in the ballot box. If it becomes necessary to pass on the challenged ballot after the other votes are counted, the validity of the challenge will then be determined. If the vote is valid, the secret ballot envelope will be taken out of the large envelope so that the identity of the challenged voter will not be known when the vote is counted. A challenged vote is still a secret vote.

Assistance to Voters. If a voter does not understand the ballot and desires assistance, only the Agent may explain the ballot to him and give him any other necessary assistance. The Agent may not (1) inquire as to how the voter wishes to vote, (2) mark the ballot for the voter, (3) observe the marking of the ballot, (4) examine the ballot after it is marked, even though the voter requests it, (5) enter the booth with the voter. All explanation of the ballot shall be made in the presence of an observer from each party.

Ballot Boxes. The ballot boxes should be inspected by the Agent in the presence of the observers immediately before the voting commences to see that the boxes are empty. At the close of the voting, they will be sealed by the Agent in the presence of and signatured by the observers. The boxes will then be collected according to prior arrangement.

Closing of Polls. At the close of the voting, the Agent will collect the eligibility lists and the badges of the observers. He will have the observers sign the Certification on Conduct of Election and will himself sign. The lists, badges, extra ballots, spoiled ballots, and certifications will be given to the Agent in charge.

Special Problems. In case of any difficulty which the Agent cannot adjust, he should at once communicate with the

Agent in charge. If, for any reason, difficulty arises in connection with any particular employee, he should be asked to step out of line until the difficulty is settled so that the other employees may proceed to vote.

Counting. Agents will supervise the counting of the ballots. Instructions on counting procedure will be given after the polls are closed and immediately preceding the counting.

NATIONAL LABOR RELATIONS BOARD.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD.

N.L.R.B. 722 (4-1-45)—INSTRUCTIONS TO ELECTION OBSERVERS.

Duties and Privileges (General):

1. Act as checkers and watchers.
2. Assist in identification of voters.
3. Challenge voters and ballots.
4. Otherwise assist agents of the Board.

Things to Do (Specific):

1. Identify voter.
2. Check off the name of the person applying to vote. One check before the name by one organization. One check after the name by the other organization or the Company.
3. See that only one voter occupies a booth at any one time.
4. See that each voter deposits a ballot in the ballot box.
5. See that each voter leaves the voting room immediately after depositing his ballot.
6. Report any conflict as to the right to vote to the agent of the Board at your table.

7. Remain in the voting place until all ballots are counted in order to check on the fairness of the count, if ballots are counted at that time. If they are not counted immediately, you will be informed as to when and where ballots will be counted.
8. Report any irregularities to the Board agent as soon as noticed.
9. Challenge voters only for good cause.
10. Wear your observer badge at all times during the conduct of the election.
11. **Be on Time.** (One-half hour before the time for the opening of the polls.)

Things Not to Do (Specific):

1. Give any help to any voter. Only an agent of the Board can assist the voter.
2. Electioneer any place during the hours of the election.
3. Argue regarding the election, except in the presence of a Board agent.
4. Leave the polling place without the agent's consent.
5. Use intoxicating liquors.
6. Keep any list of those who have or have not voted.

As an official representative of your organization, you should enter upon this task with a fair and open mind. Conduct yourself so that no one can find fault with your actions during the election.

You are here to see that the election is conducted in a fair and impartial manner, so that each eligible voter has a fair and equal chance to express himself freely and in secret.

NATIONAL LABOR RELATIONS BOARD.